

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	
)	
Amendment of Section 73.622(i),)	MB Docket No. 08-133
Final DTV Table of Allotments,)	RM-11465
Television Broadcast Stations.)	
(Greenville, North Carolina))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: September 23 , 2008

Released: September 25, 2008

By the Chief, Video Division, Media Bureau:

1. The Commission has before it a Notice of Proposed Rulemaking¹ issued in response to a petition for rulemaking filed by Esteem Broadcasting of North Carolina, LLC (“Esteem”), the licensee of station WYDO-DT, Greenville, North Carolina. Esteem requests the substitution of DTV channel 47 for its assigned DTV channel 14 at Greenville. Esteem filed comments in support of the proposal and Capitol Broadcasting Company, Inc. (“Capitol”), the permittee of station WRAL-DT, post-transition DTV channel 48, Raleigh, North Carolina, filed comments in opposition, to which Esteem filed a reply.

2. Capitol argues that Esteem’s proposal should be denied because it does not satisfy the Commission’s geographic spacing requirements for adjacent channel stations. Capitol argues that Sections 73.623(a) and 73.616(b) of the Commission’s rules² require that proposals contained in petitions for rulemaking and applications seeking facilities that will operate at the end of the DTV transition must be spaced at a minimum distance of 110 kilometers from first-adjacent stations, and that the proposed channel 47 coordinates are only 108.1 kilometers from the coordinates authorized in the WRAL-DT post-transition allotment. Alternatively, Capitol requests that the Commission dismiss or hold Esteem’s petition in abeyance until resolution of a pending petition for reconsideration challenging the technical criteria for evaluating channel substitution requests.³

3. In its reply comments, Esteem points out that in the *Third DTV Periodic NPRM Order*, the Commission proposed that it would apply an “interference protection requirement based on engineering criteria (e.g., permissible interference) rather than a geographic spacing requirement” when evaluating applications to construct post-transition facilities, as well as rulemaking petitions by authorized DTV stations that wish to change their assigned DTV channels.⁴ It proposed to use geographic spacing only for rulemaking petitions seeking new DTV channel allotments.⁵ In the *Third DTV Periodic Report and Order*,

¹ *Greenville, North Carolina*, DA 08-1588 (released July 3, 2008).

² 47 C.F.R. §§ 73.616(b) and 73.623(a).

³ Capitol cites to a petition for reconsideration filed by Cohen, Dippell, and Everist, P.C. on February 19, 2008 in connection with the *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 23 FCC Rcd 2994 (2007) (“*Third DTV Periodic Report and Order*.”)

⁴ *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, 22 FCC Rcd 9487, 9521 (2007) (“*Third DTV Periodic NPRM Order*”).

⁵ *Id.*

the Commission stated that it would “permit stations a limit of 0.5 percent new interference in addition to that in the DTV Table B Appendix.”⁶ With respect to rulemaking petitions seeking new DTV channel allotments however, the Commission stated that it would continue to use geographic spacing.⁷

4. The petition for reconsideration to which Capitol refers merely asks, in pertinent part, for additional clarification that the Commission’s intent was not to apply the geographic spacing requirements adopted for petitions seeking new station allotments “to those DTV stations which are on [Appendix B of the DTV Table of Allotments] and subsequent additions”⁸ The petition for reconsideration will be acted on in connection with the Third DTV Periodic rulemaking proceeding and we see no reason why we should defer action on Esteem’s channel substitution request based on this request for clarification.

5. We believe the public interest would be served by substituting DTV channel 47 for DTV channel 14. The channel substitution would not result in any loss area from the current DTV channel 14 allotment and would provide service to an additional population of 88,702.

6. DTV channel 47 can be substituted for DTV channel 14 at Greenville, North Carolina, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) of the Commission’s rules,⁹ at coordinates 35-26-42 N. and 77-22-8 W. This channel change further meets the technical requirements set forth in Sections 73.616 and 73.623 of the Commission’s rules¹⁰ with the following specifications:

State and City	DTV Channel	DTV Power (kW)	Antenna HAAT(meters)	DTV Service Pop. (thous.)
Greenville, NC	47	250	205	749

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission’s rules, IT IS ORDERED, That effective 30 days after date of publication of this Report and Order in the Federal Register, the DTV Table of Allotments, Section 73.622(i) of the Commission’s rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>
Greenville, North Carolina	10, *23, 47, 51

8. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, Esteem Broadcasting of North Carolina, LLC shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV channel 47 in lieu of DTV channel 14 for post-transition use.

9. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5

⁶ *Third DTV Periodic Report and Order*, 23 FCC Rcd at ¶ 155.

⁷ *Id.* at ¶ 161.

⁸ Petition for Reconsideration at 8.

⁹ 47 C.F.R. § 73.625(a).

¹⁰ 47 C.F.R. §§ 73.616, 73.623.

U.S.C. § 801(a)(1)(A).

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning the proceeding listed above, contact David J. Brown, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau